

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable W. Richard Lee
Hearing Date: Wednesday, November 6, 2013
Place: Department B – Courtroom #12
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare a civil minute order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

10:00 A.M.

1. [13-14122](#)-B-7 FERNANDO/CATALINA GARCIA MOTION TO SELL
TMT-1 10-8-13 [[25](#)]
TRUDI MANFREDO/MV
THOMAS GILLIS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

2. [13-11123](#)-B-7 MARIO/RACHEL GUTIERREZ CONTINUED STATUS CONFERENCE RE:
[13-1090](#) COMPLAINT
SALVEN V. ORTIZ, JR. 8-19-13 [[1](#)]
PETER FEAR/Atty. for pl.

3. [13-11123](#)-B-7 MARIO/RACHEL GUTIERREZ MOTION TO COMPROMISE
PLF-3 CONTROVERSY/APPROVE SETTLEMENT
JAMES SALVEN/MV AGREEMENT WITH MARIO GUTIERREZ
AND RACHEL GUTIERREZ AND/OR
MOTION TO SELL
10-9-13 [[75](#)]

ALBERT GARCIA/Atty. for dbt.
PETER FEAR/Atty. for mv.

4. [13-13224](#)-B-7 ROSEMARIE DORADO MOTION TO SELL
PFT-1 10-3-13 [[17](#)]
PETER FEAR/MV
ALFRED GALLEGOS/Atty. for dbt.
PETER FEAR/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

5. [13-14432](#)-B-7 BOBBY AGUILAR MOTION TO DISMISS CASE AND/OR
BMO-1 MOTION TO CONVERT CASE FROM
TULARE COUNTY FEDERAL CREDIT CHAPTER 7 TO CHAPTER 13
UNION/MV 10-3-13 [[17](#)]
BRANDON ORMONDE/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The case will be dismissed for cause shown. The court will enter a civil minute order. No appearance is necessary.

6. [13-14833](#)-B-7 STEPHEN GARCIA MOTION TO SELL
RHT-1 9-27-13 [[17](#)]
ROBERT HAWKINS/MV
GARY HUSS/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

7. [13-14836](#)-B-7 GERMAN QUEZADA MOTION TO DISMISS CASE
CJS-1 10-2-13 [[22](#)]
GERMAN QUEZADA/MV
CHERYL JOLLEY-SMITH/Atty. for dbt.
NON-OPPOSITION BY TRUSTEE

This matter will be dropped from calendar without a disposition. The case has already been dismissed by stipulation with the United States Trustee. No appearance is necessary.

8. [13-14836](#)-B-7 GERMAN QUEZADA MOTION FOR PROTECTIVE ORDER
CJS-2 10-2-13 [[27](#)]
GERMAN QUEZADA/MV
CHERYL JOLLEY-SMITH/Atty. for dbt.

This matter will be dropped from calendar without a disposition. The case has already been dismissed by stipulation with the United States Trustee. No appearance is necessary.

9. [13-14836](#)-B-7 GERMAN QUEZADA MOTION TO DISMISS CASE
UST-1 9-26-13 [[10](#)]
AUGUST LANDIS/MV
CHERYL JOLLEY-SMITH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
STIPULATION 10/25

The matter has been resolved by stipulation of the parties. The case has been dismissed. No appearance is necessary.

10. [13-14836](#)-B-7 GERMAN QUEZADA MOTION FOR REVIEW OF FEES
UST-2 9-26-13 [[15](#)]
AUGUST LANDIS/MV
CHERYL JOLLEY-SMITH/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
STIPULATION

The matter has been resolved by stipulation of the parties. The case has been dismissed. No appearance is necessary.

11. [13-13937](#)-B-7 OSCAR/ISABEL GARDUNO
NATIONSTAR MORTGAGE, L.L.C./MV
MARK ZIMMERMAN/Atty. for dbt.
JOSH HARRISON/Atty. for mv.

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
9-30-13 [[18](#)]

The motion will be denied without prejudice. The moving papers do not include an appropriate docket control number as required by Local Rule 9014-1(c).

The record does not show that the trustee has abandoned the moving party's collateral. The automatic stay has already terminated as to the debtors upon entry of their discharge. Unless the court enters an order granting relief from stay on a properly noticed motion, the property will be abandoned and the stay will terminate by operation of law upon entry of the final decree and closure of the case. No appearance is necessary.

12. [13-10938](#)-B-7 ERICK/REBECCA HANNEMAN
PFT-1
PETER FEAR/MV
GEORGE ALONSO/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SELL
10-3-13 [[45](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

13. [13-16539](#)-B-7 MICHAEL AUBUCHON

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
10-22-13 [[23](#)]

This matter will be called on the 10:30 a.m. calendar with the respondent's motion for relief from the automatic stay. No appearance is necessary at 10:00 a.m.

14. [12-60455](#)-B-7 MARIO/ANITA VEGA MOTION TO SELL
PFT-3 10-2-13 [[44](#)]
PETER FEAR/MV
MARIO LANGONE/Atty. for dbt.
JUSTIN HARRIS/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

15. [13-15456](#)-B-7 RONICA BRECKENRIDGE MOTION TO SELL
JES-2 10-7-13 [[20](#)]
JAMES SALVEN/MV
GEOFFREY ADALIAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

16. [11-61158](#)-B-7 ADVANCED CARE MOTION TO EMPLOY CALIFORNIA
PFT-4 MANAGEMENT, INC. INFORMATION MANAGEMENT AND/OR
PETER FEAR/MV MOTION FOR ADMINISTRATIVE
EXPENSES
10-8-13 [[63](#)]
RILEY WALTER/Atty. for dbt.
GABRIEL WADDELL/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

17. [13-15764](#)-B-7 DARRYL/CHRISTINA HARDWICK MOTION TO DISMISS CASE PURSUANT
UST-1 TO 11 U.S.C. SECTION 707(B)
AUGUST LANDIS/MV 10-4-13 [[12](#)]
SCOTT LYONS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

18. [13-14971](#)-B-7 DAT LUONG MOTION TO AVOID LIEN OF
TCS-1 BUILDERS CONCRETE, INC.
DAT LUONG/MV 9-30-13 [[20](#)]
TIMOTHY SPRINGER/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

19. [13-14971](#)-B-7 DAT LUONG MOTION TO AVOID LIEN OF MS FIRE
TCS-2 PROTECTION
DAT LUONG/MV 9-30-13 [[24](#)]
TIMOTHY SPRINGER/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

20. [13-14971](#)-B-7 DAT LUONG MOTION TO AVOID LIEN OF
TCS-3 CREDITORS BUREAU USA
DAT LUONG/MV 10-3-13 [[28](#)]
TIMOTHY SPRINGER/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

21. [13-14971](#)-B-7 DAT LUONG MOTION TO AVOID LIEN OF
TCS-4 DEVELOPERS SURETY AND INDEMNITY
DAT LUONG/MV COMPANY
10-4-13 [[32](#)]
TIMOTHY SPRINGER/Atty. for dbt.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

22. [13-16884](#)-B-7 LEONEL PRECIADO, SR. AND MOTION TO COMPEL ABANDONMENT
SL-1 MARIA PRECIADO
LEONEL PRECIADO, SR./MV 10-24-13 [[5](#)]
STEPHEN LABIAK/Atty. for dbt.
OST 10/25, NON-OPPOSITION

23. [11-18591](#)-B-7 ROY/RUTH VERA
CWC-2
JAMES SALVEN/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROBERTO G. VERA,
JUANITA VERA AND ROY VERA
10-9-13 [[38](#)]

PETER BUNTING/Atty. for dbt.
CARL COLLINS/Atty. for mv.

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

24. [13-16692](#)-B-7 TAYA GARRISON
PBB-1
TAYA GARRISON/MV
PETER BUNTING/Atty. for dbt.
OST 10/23

MOTION TO COMPEL ABANDONMENT
10-22-13 [[13](#)]

25. [13-16692](#)-B-7 TAYA GARRISON
PFT-1
PETER FEAR/MV
PETER BUNTING/Atty. for dbt.
PETER FEAR/Atty. for mv.

MOTION TO SHUT DOWN BUSINESS
10-18-13 [[8](#)]

26. [13-13794](#)-B-7 RICHARD/LADONNA BROADHEAD
TMT-1
TRUDI MANFREDO/MV
ADRIAN WILLIAMS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO SELL
10-4-13 [[17](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted without oral argument for cause shown. The moving party shall submit a proposed order. No appearance is necessary.

27. [13-15694](#)-B-7 ABIUD/EVELYN HERRERA
JMA-1
ABIUD HERRERA/MV
JOSEPH ARNOLD/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
9-25-13 [[16](#)]

This matter was fully noticed in compliance with the Local Rules and there is no opposition. The motion will be granted, only as to the specific assets listed in paragraph 3(d) of the motion, without oral argument for cause shown.

To the extent the debtors seek an order generally abandoning the debtors' three businesses, the motion will be denied. The debtors' interest in the "business" is not disclosed on schedule B and is not exempt. The moving party shall submit a proposed order. No appearance is necessary.

10:30 A.M.

1. [13-16110](#)-B-7 MARISELA DE LOPEZ
SKI-1
TD AUTO FINANCE LLC/MV
SCOTT LYONS/Atty. for dbt.
SHERYL ITH/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-25-13 [[9](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be granted without oral argument for cause shown. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

2. [13-16410](#)-B-7 DAVID EVANS
CB-1
FAIR HOUSING COUNCIL OF
CENTRAL CALIFORNIA, INC./MV
REYNALDO PULIDO/Atty. for dbt.
CHRISTOPHER BRANCART/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-29-13 [[6](#)]

3. [12-17824](#)-B-7 ROSARIO SAMANIEGO
VVF-1
AMERICAN HONDA FINANCE
CORPORATION/MV
THOMAS GILLIS/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
DISCHARGED, RESPONSIVE
PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-8-13 [[33](#)]

This motion for relief from stay was fully noticed in compliance with the Local Rules and there was no opposition. The motion will be denied as moot as to the debtor(s) because their discharge has been entered. The motion will be granted for cause shown as to the chapter 7 trustee. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The proposed order shall specifically describe the property or action to which the order relates. If the motion involves a foreclosure of real property in California, then the order shall also provide that the bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5. If the notice and motion requested a waiver of Rule 4001(a)(3), that relief will be granted. *Unless the court expressly orders otherwise, the proposed order shall not include any other relief.* If the prayer for relief includes a request for adequate protection, and/or a request for an award of attorney fees, those requests will be denied without prejudice. Adequate protection is unnecessary in light of the relief granted herein. A motion for attorney fees pursuant to 11 U.S.C. § 506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. No appearance is necessary.

4. [13-16030](#)-B-7 SUKHWANT/PARMJIT SANDHU
ANT-2
PORT OF SUBS, INC./MV
JERRY LOWE/Atty. for dbt.
AMY TIRRE/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-2-13 [[34](#)]

5. [13-15236](#)-B-7 CHERYL WHALEY
TJS-1
JPMORGAN CHASE BANK, N.A./MV
TIMOTHY SILVERMAN/Atty. for mv.
DISMISSED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-3-13 [[26](#)]

This matter will be dropped from calendar without a disposition. The case has already been dismissed. No appearance is necessary.

6. [13-16539](#)-B-7 MICHAEL AUBUCHON
DANIEL OREJEL/MV

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-8-13 [[13](#)]

11:00 A.M.

1. [13-16223](#)-B-7 JAVIER ORDAZ

PRO SE REAFFIRMATION AGREEMENT
WITH AMERICAN AUTO FINANCING
INC.
10-15-13 [[15](#)]

EDDIE RUIZ/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. The hearing will be dropped from calendar.

The Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

In addition, the proposed reaffirmation agreement is incomplete and does not include the disclosures and notices required by the Bankruptcy Code. The document filed purports to be EDC form B240A, but it does not conform to the current version of the referenced EDC form. No appearance is necessary at this hearing.

2. [13-15224](#)-B-7 JOI HERNANDEZ

PRO SE REAFFIRMATION AGREEMENT
WITH WELLS FARGO DEALER
SERVICES
10-10-13 [[19](#)]

3. [13-15333](#)-B-7 BENITO MARTINEZ AND MARIA
ELIZA TREJO DE MARTINEZ

REAFFIRMATION AGREEMENT WITH
WELLS FARGO DEALER SERVICES
10-16-13 [[12](#)]

ASLAN KHODOROVSKY/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In addition, the debt being reaffirmed does not appear to be related to property belonging to the debtors. No appearance is necessary.

4. [13-16046](#)-B-7 EMMY FINLEY PRO SE REAFFIRMATION AGREEMENT
WITH HTD LEASING LLC
10-11-13 [[16](#)]
5. [13-15755](#)-B-7 DAVID ANSTED REAFFIRMATION AGREEMENT WITH
BANK OF STOCKTON
9-23-13 [[10](#)]
GEORGE LOGAN/Atty. for dbt.
6. [13-15755](#)-B-7 DAVID ANSTED REAFFIRMATION AGREEMENT WITH
RBS CITIZENS, N.A.
9-25-13 [[12](#)]
GEORGE LOGAN/Atty. for dbt.
7. [13-14063](#)-B-7 GRAIG/JULIE LAFLEUR PRO SE REAFFIRMATION AGREEMENT
WITH SUNTRUST MORTGAGE
9-17-13 [[16](#)]
LAYNE HAYDEN/Atty. for dbt.
DISCHARGED

The court intends to deny approval of this reaffirmation agreement. The form of the reaffirmation agreement is incomplete. It is not signed by the debtors. The Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. In addition, both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.

8. [13-15069](#)-B-7 MARTHA AVILA PRO SE REAFFIRMATION AGREEMENT
WITH ONEMAIN FINANCIAL
10-18-13 [[17](#)]
9. [13-15474](#)-B-7 TAURINO/VISENTA TORRES REAFFIRMATION AGREEMENT WITH
AMERICAN HONDA FINANCE CORP.
9-24-13 [[18](#)]
PATRICK KAVANAGH/Atty. for dbt.

The court intends to deny approval of this reaffirmation agreement. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. No appearance is necessary.